

provided by paragraph (d)(1) of this section. Upon receipt of written notice that one or more testimonial depositions are to be taken upon written questions, the Trademark Trial and Appeal Board shall suspend or reschedule other proceedings in the matter to allow for the orderly completion of the depositions upon written questions.

(e) Within ten days after the last date when questions, objections, or substitute questions may be served, the party who proposes to take the deposition shall mail a copy of the notice and copies of all the questions to the officer designated in the notice; a copy of the notice and of all the questions mailed to the officer shall be served on every adverse party. The officer designated in the notice shall take the testimony of the witness in response to the questions and shall record each answer immediately after the corresponding question. The officer shall then certify the transcript and mail the transcript and exhibits to the party who took the deposition.

(f) The party who took the deposition shall promptly serve a copy of the transcript, copies of documentary exhibits, and duplicates or photographs of physical exhibits on every adverse party. It is the responsibility of the party who takes the deposition to assure that the transcript is correct (see § 2.125(b)). If the deposition is a discovery deposition, it may be made of record as provided by § 2.120(j). If the deposition is a testimonial deposition, the original, together with copies of documentary exhibits and duplicates or photographs of physical exhibits, shall be filed promptly with the Trademark Trial and Appeal Board.

(g) Objections to questions and answers in depositions upon written questions may be considered at final hearing.

[48 FR 23139, May 23, 1983]

§ 2.125 Filing and service of testimony.

(a) One copy of the transcript of testimony taken in accordance with § 2.123, together with copies of documentary exhibits and duplicates or photographs of physical exhibits, shall be served on each adverse party within thirty days after completion of the taking of that testimony. If the tran-

script with exhibits is not served on each adverse party within thirty days or within an extension of time for the purpose, any adverse party which was not served may have remedy by way of a motion to the Trademark Trial and Appeal Board to reset such adverse party's testimony and/or briefing periods, as may be appropriate. If the deposing party fails to serve a copy of the transcript with exhibits on an adverse party after having been ordered to do so by the Board, the Board, in its discretion, may strike the deposition, or enter judgment as by default against the deposing party, or take any such other action as may be deemed appropriate.

(b) The party who takes testimony is responsible for having all typographical errors in the transcript and all errors of arrangement, indexing and form of the transcript corrected, on notice to each adverse party, prior to the filing of one certified transcript with the Trademark Trial and Appeal Board. The party who takes testimony is responsible for serving on each adverse party one copy of the corrected transcript or, if reasonably feasible, corrected pages to be inserted into the transcript previously served.

(c) One certified transcript and exhibits shall be filed promptly with the Trademark Trial and Appeal Board. Notice of such filing shall be served on each adverse party and a copy of each notice shall be filed with the Board.

(d) Each transcript shall comply with § 2.123(g) with respect to arrangement, indexing and form.

(e) Upon motion by any party, for good cause, the Trademark Trial and Appeal Board may order that any part of a deposition transcript or any exhibits that directly disclose any trade secret or other confidential research, development, or commercial information may be filed under seal and kept confidential under the provisions of § 2.27(e). If any party or any attorney or agent of a party fails to comply with an order made under this paragraph, the Board may impose any of the sanctions authorized by § 2.120(g).

[48 FR 23140, May 23, 1983, as amended at 54 FR 34900, Aug. 22, 1989]

§ 2.126 [Reserved]**§ 2.127 Motions.**

(a) Every motion shall be made in writing, shall contain a full statement of the grounds, and shall embody or be accompanied by a brief. A brief in response to a motion shall be filed within fifteen days from the date of service of the motion unless another time is specified by the Trademark Trial and Appeal Board or the time is extended by order of the Board on motion for good cause. When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded. An oral hearing will not be held on a motion except on order by the Board.

(b) Any request for reconsideration or modification of an order or decision issued on a motion must be filed within thirty days from the date thereof. A brief in response must be filed within fifteen days from the date of service of the request.

(c) Interlocutory motions, requests, and other matters not actually or potentially dispositive of a proceeding may be acted upon by a single Member of the Trademark Trial and Appeal Board or by an Attorney-Examiner of the Board to whom authority so to act has been delegated.

(d) When any party files a motion to dismiss, or a motion for judgment on the pleadings, or a motion for summary judgment, or any other motion which is potentially dispositive of a proceeding, the case will be suspended by the Trademark Trial and Appeal Board with respect to all matters not germane to the motion and no party should file any paper which is not germane to the motion. If the case is not disposed of as a result of the motion, proceedings will be resumed pursuant to an order of the Board when the motion is decided.

(e)(1) A motion for summary judgment should be filed prior to the commencement of the first testimony period, as originally set or as reset, and the Trademark Trial and Appeal Board, in its discretion, may deny as untimely any motion for summary judgment filed thereafter.

(2) For purposes of summary judgment only, a discovery deposition, or an answer to an interrogatory, or a

document or thing produced in response to a request for production, or an admission to a request for admission, will be considered by the Trademark Trial and Appeal Board if any party files, with the party's brief on the summary judgment motion, the deposition or any part thereof with any exhibit to the part that is filed, or a copy of the interrogatory and answer thereto with any exhibit made part of the answer, or a copy of the request for production and the documents or things produced in response thereto, or a copy of the request for admission and any exhibit thereto and the admission (or a statement that the party from which an admission was requested failed to respond thereto).

(f) The Board does not have authority to hold any person in contempt, or to award attorneys' fees or other expenses to any party.

[48 FR 23140, May 23, 1983, as amended at 54 FR 34900, Aug. 22, 1989]

§ 2.128 Briefs at final hearing.

(a)(1) The brief of the party in the position of plaintiff shall be due not later than sixty days after the date set for the close of rebuttal testimony. The brief of the party in the position of defendant, if filed, shall be due not later than thirty days after the due date of the first brief. A reply brief by the party in the position of plaintiff, if filed, shall be due not later than fifteen days after the due date of the defendant's brief.

(2) When there is a counterclaim, or when proceedings have been consolidated and one party is in the position of plaintiff in one of the involved proceedings and in the position of defendant in another of the involved proceedings, or when there is an interference or a concurrent use registration proceeding involving more than two parties, the Trademark Trial and Appeal Board will set the due dates for the filing of the main brief, and the answering brief, and the rebuttal brief by the parties.

(3) When a party in the position of plaintiff fails to file a main brief, an order may be issued allowing plaintiff until a set time, not less than fifteen days, in which to show cause why the Board should not treat such failure as